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Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-128

GOVERNOR OF MARYLAND, ET AL.,
Appellants,

v.

BRUCE BRADLEY, ET AL.,
Appellees.

JURISDICTIONAL STATEMENT ON APPEAL FROM A UNITED STATES DISTRICT COURT OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

FRANCIS B. BURCH,
Attorney General of Maryland,
HENRY R. LORD,
Deputy Attorney General,
GEORGE A. NILSON,
Assistant Attorney General,
ROBERT A. ZARNOCH,
Assistant Attorney General,
1400 One South Calvert Bldg.,
Baltimore, Md. 21202,
Attorneys for Appellants.

The Daily Record Co., Baltimore, Md. 21202

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Appellants, Marvin Mandel, Governor of Maryland, et al., respectfully pray for either summary reversal of the decision below or for plenary consideration of the questions presented, with briefs on the merits and oral argument.

OPINION BELOW

The District Court issued its opinion on May 17, 1976. The opinion has not yet been reported but is reprinted at pages 1a to 13a of the Appendix.

JURISDICTION

On April 30, 1976, Appellees filed suit in the United States District Court for the District of Maryland,

alleging deprivation of their constitutional rights by operation of various provisions of Maryland's election law. Jurisdiction was alleged under 28 U.S.C. § 1331 and 28 U.S.C. § 2201. Because an injunction was sought against the operation of portions of Maryland statutory law, application was made for the convening of a three-judge district court under 28 U.S.C. § 2281. On April 30 the district judge to whom application was made entered an order preserving the status quo, a three-judge panel was duly convened, and on May 12 evidence was taken and argument was heard. The Court filed its opinion on May 17 and on June 2 issued its final order granting Appellees declaratory and injunctive relief. (See Appendix pp. 14a-16a). Notice of Appeal to this Court was filed on June 4, 1976 in the District Court (See Appendix pp. 16a-19a). Jurisdiction is conferred on this Court by 28 U.S.C. § 1253.

STATUTES INVOLVED

The principal statute involved is Maryland Code (1976 Replacement Volume) Article 33, § 7-1(e). Also relevant are the remaining provisions of § 7-1 and certain portions of Article 33, §§ 4A-1, 4A-3 and 5-2. These statutory provisions are reprinted at pp. 19a-23a of the Appendix.

QUESTIONS PRESENTED

(1) Whether the District Court erred in examining in isolation the deadline under Maryland law for filing nominating petitions in a Presidential election year (seventy days before the primary election) without considering the other elements of Maryland's system of gaining a place on the general election ballot?

(2) Whether the District Court erred in holding that the statutory deadline, standing by itself, constitutes an

unconstitutional denial of Appellee Bradley's right to obtain a place on the general election ballot and of the other Appellees' asserted right to have the candidate's name appear on that ballot?

(3) Whether the District Court erred in concluding that the summary disposition principles articulated in *Hicks v. Miranda,* 422 U.S. 332 (1975) required it to adopt the precise reasoning of the lower court's opinion in *Salera v. Tucker,* 399 F. Supp. 1258 (E.D. Pa. 1975), *aff'd summarily sub nom., Tucker v. Salera,* ___ U.S. ___ 96 S. Ct. 1451 (1976) and relieved it of its duty to distinguish and harmonize prior summary affirmances and written decisions of this Court?

STATEMENT OF THE CASE

With full knowledge of the strong field of party candidates from which his likely general election opponents were to come, Appellee Bruce Bradley, in the spring of 1975, began to weigh the possibility of running as an independent candidate in Maryland for the United States Senate in 1976. In the fall of 1975 Bradley and his supporters began circulating petitions to obtain the necessary signatures for him to appear on the 1976 general election ballot in Maryland. Needing 51,155 signatures to qualify (3 percent of the State's registered voters determined as of four months before the primary), Bradley submitted 53,239 signatures to the local election boards for validation on March 8, 1976. On the same date — the filing deadline for all State candidates including those campaigning in the party primaries — he filed a certificate of candidacy for the Senate seat. This filing deadline is fixed by law at 70 days before the primary election and occurs in early July (approximately 120 days before the general election) in non-Presidential election years and in early

March (approximately 230 to 240 days before the general election) in years when voters make their nomination selections in a May Presidential Preference Primary.

Following the normal signature verification process, the State Administrative Board of Election Laws notified Bradley on April 15, 1976 that his petition papers contained only 42,049 valid signatures and were thus insufficient to gain him a place on the general election ballot. Signatures had been invalidated for various reasons, many having been offered by persons not registered to vote, or by persons who did not reside in the county indicated on the petition sheet, or by persons who had previously signed the petition.

On April 30 Bradley and various supporters who alleged only their status as petition signators or persons desirous of having the candidate's name on the general election ballot filed suit in the United States District Court for the District of Maryland. Appellees contended that their constitutional rights had been violated in the following respects:

> 1. The remoteness of the early March candidate filing date from the date of the general election, standing by itself, placed an "unconstitutionally heavy burden" on Bradley's ability to be nominated by petition in a Presidential election year and thus restricted his First Amendment right of political association, "unconstitutionally impacted the Plaintiffs' right to vote" by unduly limiting the number of potential candidates for elective office and violated the Equal Protection Clause of the Fourteenth Amendment in that party primary candidates need not comply with the petition requirement while "independent candidates must comply with the unnecessarily burdensome requirement of filing nominating petitions at a date far removed from the date of the general election".

> 2. Various provisions of Section 7-1 of Article 33 of the Maryland Code, such as the typed or printed name requirement and the one county per petition sheet requirement, when coupled with the alleged lack of uniformity in county signature validation procedures and the respective boards' actions in conducting their regular voter list purges and voter registration drives "exacerbate . . . the remoteness of the filing date from the general election" so as to constitute a "totality of circumstances" violative of Appellees' rights of association and equal protection.

At the hearing before the three-judge panel, Appellees introduced affidavit testimony designed to show that Appellee Bradley encountered difficulties in his efforts to appear before various organizations prior to the filing deadline, with several indicating that he might appear later with other candidates running in the primary election. This testimony also pointed to the alleged difficulties inherent in circulating petitions in winter weather and during the Thanksgiving and Christmas holiday seasons. Finally, Appellee Bradley's affidavit indicated difficulty in approaching potential petition signers far in advance of the general election when the issues which were then current might not be the most important issues in November. While Appellees premised their constitutional attack on the 70 day pre-primary deadline solely on its remoteness from the *general election,* virtually all of their evidence and argument advanced before the District Court focused on the difficulties of gathering petition signatures more than 70 days before the *primary election.*

The State introduced evidence demonstrating that while independent candidates must file their petitions by the same early date on which all candidacies must be perfected, they are favorably treated under various other provisions of State law generally beneficial to

independent candidacies and enjoy certain inherent practical advantages over party primary candidates. This evidence established that:

1. Maryland law places no limit whatsoever on the period during which signatures can be gathered prior to the filing deadline, and an independent candidate may gather petition signatures months and even years before the deadline.

2. Persons signing nominating petitions for independents may be affiliated with the major parties and are not disqualified from voting in the primary elections.

3. Signatures are required of only 3 percent of the registered voters eligible to vote for that office -- a figure substantially less than the maximum heretofore sustained by this Court.

4. Signers do not have to state their intention to vote for the candidate.

5. Although expenditures by and contributions to primary campaigns for State office are subject to State regulation, this is not the case with respect to funds contributed or spent for nomination by petition to State office.

6. Petitions may be circulated by non-residents and persons not registered to vote in Maryland.

7. Because of Maryland's liberal registration by mail statute (Art. 33, § 3-1), independents may simultaneously approach signators and furnish them with a registration by mail form which need only be completed and mailed to complete registration.

In addition, Professor Richard Smolka of American University, as a qualified expert on the law and conduct of elections, testified that an independent candidate seeking signatures would have an easier time gathering signatures before the heat of the primary election campaign, by which time many voters have crystalized their views as to the candidates. He further testified

that unlike a primary candidate, an independent does not have to defeat an opponent to get on the general election ballot, usually spends less, must gather fewer signatures than a primary candidate needs votes, and does not have to urge frequently reluctant voters to the polls but can obtain their "vote" on the spot. He also noted that the petition signer is asked to take the relatively easy step of supporting a candidate without prejudice to his ability to vote to nominate another, whereas the primary candidate must convince his electorate to support him to the exclusion of his opponents. Finally, Professor Smolka noted that because of the large financial investment usually required of primary candidates and the State and federal regulation of campaign spending and contributions, primary candidates have a greater need than independents to know the field of candidates at an early date "in order to make intelligent decisions relative to the solicitation of contributions and the expenditure of monies during the primary election campaign." Professor Smolka's testimony was supported by Willard A. Morris, the State Administrator of Election Laws.

The State also established that during the last gubernatorial election in Maryland (1974) five persons qualified as independent candidates for the Maryland House of Delegates and three for the State Senate via the nomination by petition route, and that in 1976 two persons gathered sufficient signatures by March 8 to qualify for the general election ballot as candidates for the United States House of Representatives.

In addition to the State interests identified through the testimony of its witnesses, Maryland asserted as "compelling" or sufficient numerous other justifications for the simultaneous filing deadline for primary candidates and independents. These included:

1. The prevention of frivolous and fraudulent candidacies.

2. The reduction of voter confusion that intensifies in a Presidential election year.

3. The establishment of a degree of parity between independent and party candidates to inhibit one party from promoting "independent" candidacies to siphon off votes from the other party's nominee or the proliferation of "wait and see" candidates who defer the perfection of their candidacy and their entry into the general election fight until the primary results are in.

4. The fostering of public discussion of campaign issues among *all* candidates when voter interest is at its zenith, rather than allowing independents to maintain a low profile until the primaries have ended.

5. The prevention of the administrative problems that might surface if the petition verification process and likely challenges (such as this one) were telescoped into a shorter and later period of time.

6. The promotion of these interests while still preserving the right of Maryland voters to be heard at an early point in a Presidential election year as to their choice for Presidential nominees.

On May 17, 1976, the court issued its opinion, holding that the filing deadline of Section 7-1(e) (70 days before the primary in a presidential election year) standing by itself constitutes "an unconstitutional burden on Bradley's right to become an independent candidate and on the rights of the other plaintiffs to exercise their right to vote" (App. p. 12a) and that Appellee Bradley had a constitutional right to collect the requisite number of valid signatures until the date of the primary election.[1]

[1] The court strongly suggested that it felt Bradley may be entitled to a filing date even later than the date of the primary election (App. p. 12a). In attempting to tailor its relief in this case to Bradley's particular situation, the court began with the May 18th date of the primary election and gave the candidate an additional 53 days beyond that date on the theory that he had not been "authorized" to collect signatures from the date of his original filing on March 8th until the entry by consent of the court's temporary restraining order on April 30, a period of 53 days. This result obtained notwithstanding Bradley's testimony that he knew on March 8 that he would fall short of the statutorily required number of signatures and notwithstanding the undeniable fact that he was legally free to gather signatures during the 53 day period following March 8th.

The court made no attempt to analyze the evidence presented on the relative burdens of independents and primary candidates, to weigh all of the State interests advanced here, or to focus on the filing deadline in light of other provisions of State law, but concluded that its decision was controlled legally and factually by the opinion of the three-judge district court in *Salera v. Tucker*, 399 F. Supp. 1258 (E.D. Pa. 1975), *aff'd sub nom. Tucker v. Salera*, 96 S. Ct. 1451 (1976).

> "We do not make detailed findings of fact in the instant case, but the evidence before us leads us likewise to conclude that the March 8 termination date of the signature gathering period in the 1976 general election in Maryland substantially burdened the ability of Bradley to gain access to the ballot and substantially burdened the ability of the other plaintiffs to have Bradley as a candidate of their choice appear on the ballot at the general election for all of the reasons assigned by the *Salera* court." (App. p. 6a).

Even though the statute at issue in *Salera*, unlike the open-ended Maryland law, allowed a scant three week period for the gathering of signatures, even though much of the language in the *Salera* opinion seemed to indicate that the three-judge court in Pennsylvania struck down the Pennsylvania filing deadline in conjunction with the brief signature gathering period,

and even though the practical effect of the *Salera* decision was to obliterate the three week period for the plaintiffs in that case, the court in *Bradley* was convinced that both the Pennsylvania panel and this Court, without giving any weight to Pennsylvania's questionably short signature gathering period, had struck down in isolation the filing deadline for independents of 218 days before the general election. The lower court here rejected the proffered compelling interests asserted by Pennsylvania in *Salera* (administrative convenience, misuse of the nomination by petition procedure by defeated primary candidates and the promotion of intelligent voting through voter knowledge of candidates) as if they were simply being reasserted by Maryland. In addition, the court said that Maryland's simultaneous filing deadline for independents and primary candidates could not be justified on an "equal treatment" theory:

> "Signature gathering by an independent candidate is not the equivalent of the filing of a declaration of candidacy by a partisan candidate; it is the equivalent of the primary election. Maryland's equal treatment argument would have validity only if the deadline for the filing of petitions was the same date as the primary election, but it is not. Moreover, Maryland's professed desire to treat partisan and independent candidates alike does not compel fixing the cutoff date for filing the requisite number of valid signatures 70 days before the primary election. Quite readily, Maryland could require independent candidates to file a declaration of candidacy at the same time as partisan candidates and then extend the date for the submission of signatures to the date of the primary election." (App. p. 9a).

In response to the State's argument that the constitutionality of Section 7-1(e) had been sustained by recent prior decisions of three-judge panels in Maryland,

summarily affirmed by this Court (*Auerbach v. Mandel,* Civil No. 72-141-N (D. Md. March 3, 1972), *aff'd* 409 U.S. 808 (1972) and *Maryland People's Party v. Mandel,* Civil No. 72-865-K (D. Md. September 5, 1972), *aff'd* 410 U.S. 907 (1973)) and was fully supported by summary affirmances of decisions of other jurisdictions (*Socialist Labor Party v. Rhodes,* 318 F. Supp. 1262 (S.D. Ohio 1970), *aff'd sub nom. Sweetenham v. Gilligan,* 409 U.S. 942 (1972); *Pratt v. Begley,* 352 F. Supp. 328 (D. Ky. 1970), *aff'd* 409 U.S. 943 (1970); *Jackson v. Ogilvie,* 325 F. Supp. 864 (N.D. Ill.), *aff'd* 403 U.S. 925 (1971)), the District Court said that language in its earlier opinions regarding the Section 7-1(e) filing deadline, while "it seemed to reflect the law at the time it was uttered", was "pure dictum". (App. p. 11a.) The lower court went on to express its belief that while the question had been presented in the *Auerbach* and *Maryland People's Party* Jurisdictional Statements and Motions to Affirm, the Supreme Court had not yet decided the question of the constitutionality of the Maryland filing deadline in summarily affirming those decisions.

Finally, the District Court felt that under *Hicks v. Miranda,* 422 U.S. 332 (1975) it was bound to follow its own perception of the last summary affirmance of this Court, despite less recent summary affirmances and written opinions of this Court to the contrary.[2]

[2] In addition to the cases cited, *supra,* the *Bradley* court denigrated as "no longer the law" on the constitutional treatment of preprimary filing deadlines the written opinions of this Court in *Jenness v. Fortson,* 403 U.S. 431 (1970) and *Williams v. Rhodes,* 393 U.S. 23 (1968). (App. p. 11a.)

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

DECISIONS OF THIS COURT MANDATE THAT THE BURDEN OF MARYLAND'S UNIFORM PREPRIMARY FILING DEADLINE ON AN INDEPENDENT CANDIDATE'S CONSTITUTIONAL RIGHTS BE GAUGED NOT IN ISOLATION BUT IN CONJUNCTION WITH OTHER ELEMENTS OF THE STATE'S SYSTEM OF GAINING ACCESS TO THE GENERAL ELECTION BALLOT.

Out of respect for the diversity which is the hallmark of State election laws, this Court has always focused on the overall statutory scheme regulating ballot access and has eschewed any rule automatically invalidating individual provisions of State law alleged to burden an independent's rights. In *Storer v. Brown*, 415 U.S. 724, 730 (1974) this Court said:

> "It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases; and the rule fashioned by the Court to pass on constitutional challenges to specific provisions of election laws provides no litmus-paper test for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause. The rule is not self-executing and is no substitute for the hard judgments that must be made. Decision in this context, as in others, is very much a 'matter of degree,' very much a matter of 'consider[ing] the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' What the result of this process will be in any specific case may be very difficult to predict with great assurance." (Citations omitted).

Similarly, this Court has said that when faced with a challenge to restrictions on ballot access, lower courts

must inquire into the "nature, extent and likely impact" of the requirements (*Id.* at 738) and that experience is one valid guide to the extent of the burdens imposed by a statutory scheme. *Id.* at 742; *Jenness v. Fortson, supra,* at 439. See also *Buckley v. Valeo,* U.S. , 46 L. Ed. 2d 659, 735 (1976).

Moreover, this Court has never indicated that all restrictions or burdens placed on the access of nonparty candidates to the ballot affect constitutional rights. Only "excessively" or "severely" burdensome requirements and "substantial" restrictions call constitutional examination into play. See *Storer v. Brown, supra,* 415 U.S. at 729, 738. And even "substantial" restrictions on the right to vote or to associate are not subject to automatic invalidation. It is only when the restrictions severely burden the right to associate for political purposes and the right to vote effectively that discrimination against independent candidates must be justified by the showing of compelling state interests. *Id.* at 729.

These pronouncements and the analytical methodology they require were totally ignored by the lower court in its rush to read *Salera* as signaling a fundamental change in this Court's attitude toward state laws governing minor party or independent candidacies. The lower court's action in striking down Maryland's pre-primary deadline, and in casting a dark cloud over any petition filing deadline for independents and others bypassing the primary elections that occurs before the primaries, not only calls into question the laws of those states which have pre-primary deadlines[3] but also stands as a warning to those states that this alleged

[3] Some of the states include: Arkansas (60 days), Georgia (69 days), Kentucky (55 days), New Jersey (40 days), Ohio (75 days), Oklahoma (35 days), Pennsylvania (49 days), Tennessee (60 days), and West Virginia (31 days).

defect cannot be corrected by otherwise liberalizing the nomination by petition mechanism. It can be remedied *only* by moving back the deadline for filing petitions. Under the lower court's inflexible invalidation of pre-primary deadlines, at least where they occur well in advance of the general election, even a statutory scheme requiring that a mere 50 signatures be gathered to obtain general election ballot access would be determined to be excessively burdensome if the signatures must be filed by a specified date weeks or months before the state's primary.

The fundamental unsoundness of considering the statutory deadline in isolation rather than as a part of the overall scheme is highlighted by the lower court's fashioning of a rule which ignores the actual experience of independent ballot access in Maryland. For example, 8 local candidates qualified as independents under Maryland's nomination by petition procedure in 1974 (which was the same as it is now), and 2 Congressional candidates filed the requisite number of signatures by the March 8 deadline in 1976. Moreover, even Appellee Bradley filed more than the required number of signatures by the deadline at issue in this case; and the evidence before the lower court indicated that his inability to qualify as a candidate was due at least as much to his failure to conduct a sufficiently vigorous and efficient petition campaign as it was to the March deadline.[4]

In short, this Court's requirement that actual experience be examined in determining the burden of a

[4] For example, Bradley paid signature gatherers on a per signature basis rather than for each valid signature and suffered from an invalidation rate of over 20%. He did not use the postcard-registration technique to sign up unregistered voters. He also did not begin gathering signatures as soon as he could have and raised and spent far less than the principal candidates in the Democratic Primary.

ballot access restriction was deliberately abandoned by the lower court. See *Storer v. Brown, supra,* at 742; *Jenness v. Fortson, supra,* at 439.

Furthermore, following hand in hand with the lower court's erroneous examination of Maryland's filing deadline in isolation, is its creation of a rule of reverse discrimination for ballot access cases. Independent candidates must now be afforded advantages not available to party candidates. And states must not attempt, even for the ultimate benefit of the voters and the electoral process, to place party candidates and independents on an equal footing lest they risk a finding of unconstitutional discrimination. In the view of the lower court, equal treatment of all candidates, a value expressly noted when this court sustained ballot access restrictions in *Storer v. Brown, supra,* at 733, and *Jenness v. Fortson, supra,* at 433-34, ceases to be important.

II.

MARYLAND'S UNIFORM PRE-PRIMARY FILING DEADLINE IS CONSTITUTIONAL AS APPLIED TO INDEPENDENT CANDIDATES WHETHER VIEWED IN ISOLATION OR IN THE CONTEXT OF THE OVERALL REGULATORY SCHEME FOR STATE BALLOT ACCESS

At the outset of this abbreviated discussion of the justifications for Maryland's uniform pre-primary filing deadline contained in Section 7-1(e) and of the cases of this Court that support the statute's constitutionality, it is important to emphasize that Maryland does not question the tenet that State ballot access restrictions, including early filing deadlines, can in some cases substantially and unconstitutionally burden the rights of independent candidates and their voting constituency. *Williams v. Rhodes, supra.* Nor does the State challenge the *result* reached in *Tucker v. Salera,*

supra, viz., that a 3-week gathering period for signatures that ends 8 months before the general election is unconstitutional. What the State contends is that the Maryland filing deadline, when properly viewed in the context of the total regulatory scheme, is significantly different and less burdensome than the statute at issue in *Salera,* and is completely justified by interests not at stake and not raised in the Pennsylvania case.

In *Wood v. Putterman,* 316 F. Supp. 646, 649 (D. Md. 1970), *aff'd* 400 U.S. 859 (1970), Circuit Judge Harrison Winter, speaking for two members of a three-judge district court, contrasted the Ohio statute struck down in *Williams v. Rhodes, supra,* with the Maryland nomination by petition law and noted that:

> "7-1 permits nomination by petition signed by only 3% of the total registered voters entitled to vote for the office for which the nomination is sought. *There are no other restrictions of any consequence,* except that no person may join in nominating more than one nominee for each office to be filled; nor may any person sign more than once for the same nominee for an office." (Emphasis added.)

In *Auerbach v. Mandel,* No. 72-141C (D. Md. March 3, 1972), *aff'd* 409 U.S. 808 (1972), Judge Winter speaking for a unanimous three-judge court said that the Section 7-1(e) filing deadline (which occurred 2 days earlier in 1972 than in 1976) although a "heavy burden" was not "an unreasonable time." The court's order in that case expressly declared that the challenged provisions of the State election code including the candidate filing deadline "are not unreasonable or unconstitutionally burdensome and are not invalid."[5]

[5] The language of the district court's order in *Auerbach* belies the suggestion of the lower court here that *Auerbach* did not decide the constitutionality of the Section 7-1(e) filing deadline. Moreover, an examination of the jurisdictional statements in the *Auerbach* case and in *Maryland People's Party v. Mandel,* Civil No. 72-865-K (D. Md. September 5, 1972), *aff'd* 410 U.S. 907 (1973) discloses that this issue was clearly presented to this Court.

A cursory analysis of the entire scheme for nomination by petition in Maryland demonstrates the correctness of these utterances. Unlike the statute at issue in *Salera* which gave a candidate and his supporters only 21 days to gather the requisite number of signatures, Maryland has an "open" signature gathering period. Until the deadline, candidates can spend months or years gathering signatures. Unlike the filing deadline in *Salera,* which was always fixed at approximately seven to eight months before the general election, Maryland's simultaneous filing deadline for independent and party candidates occurs 120 days before the general election in non-Presidential election years[6] and 239 days before the general election in a Presidential election year only because in those years the *entire electoral process* is "stepped up" and off to an early start to give Maryland voters the opportunity to voice their preference in the Presidential primaries and thereby exert some influence at the summer conventions.[7] In addition, Maryland's nomination by petition process imposes no "suffocating restrictions" upon the free circulation of nominating petitions and in this important respect strikingly resembles the Georgia

[6] A deadline ending 150 days before the general election was sustained in *Jenness v. Fortson,* 403 U.S. 431 (1970); and quite conceivably the 120 day provision in non-Presidential election years can be justified on the basis of administrative convenience alone. *Cf. American Party of Texas v. White,* 415 U.S. 767, 787 n. 18 (1974).

[7] Indeed, in 1976 it was the Maryland Democratic Presidential Preference Primary which launched California Governor Edmund G. Brown Jr.'s national campaign for his party's nomination.

statutory scheme scrutinized and upheld in *Jenness v. Fortson,* 403 U.S. 431, 439 (1970):

> ". . . a voter who has signed the petition of a nonparty candidate is free thereafter to participate in a party primary. The signer of a petition is not required to state that he intends to vote for that candidate at the election. A person who has previously voted in a party primary is fully eligible to sign a petition, and so, on the other hand is a person who was not even registered at the time of the previous election."

In no way can it be said that Maryland's statutory scheme operates "to freeze the political status quo." *Id.* at 438.

Appellees' principal complaint below was not that the entire Maryland scheme for independent ballot access froze the political status quo, but that Maryland's filing deadline requires the independent candidate to make excessively early preparations for his candidacy; to, in effect, have finished his horserace, or at least entered the stretch, just as the primary candidates are getting to the starting gate. This is sheer fiction. Few, if any, primary candidates who expect to win are just launching their campaigns on the filing deadline. In most cases a primary candidate has invested a substantial amount of time and labor prior to the filing date, and the evidence below establishes that this was the case with respect to the main contenders in the primary contests for the United States Senate seat sought by Bradley. Bradley was hardly alone among the various candidates when he sought out the voters in late 1975 and early 1976.[8] In the same vein, Appellees' contended

[8] In addition, in *Storer v. Brown, supra,* where this Court upheld a requirement that an independent candidate must not have been affiliated with a political party for a year before the primary, the Court rejected this very same type of burdensome "anticipation" argument:

"It is true that a California candidate who desires to run for office as an independent must anticipate his candidacy substantially in advance of his election campaign, but the required foresight is little more than the possible 11 months examined in *Rosario* [*v. Rockefeller,* 410 U.S. 752 (1973)] and its direct impact is on the candidate, and not voters." 415 U.S. at 734.

that voters have no interest in a candidacy prior to the March 8th filing date. This is hardly tenable in a Presidential election year when political campaigns are on everyone's mind before the first snowfall in New Hampshire. As just noted, Bradley and his rivals were all approaching and appearing before the voters during this "remote" period, and Bradley did get more than 50,000 signatures on his petitions, and two Maryland independent candidates for the United States House of Representatives were able to generate enough voter interest in early 1976 to satisfy this same 3% requirement which Bradley fell short of. If an independent candidate is unable to generate sufficient interest in his campaign early in the year, he has himself to blame — not the system or the season.

Moreover, the evidence below establishes that the pre-primary filing deadline for independent candidates is found to offer the independent a singular advantage in terms of gathering petitions because he will find it easier to collect signatures at that time. He does not encounter the voter resistance rampant in the heat of a primary or thereafter when voters' views have begun to crystalize regarding party candidates or when many voters have been completely "turned off" by excessive political activity. He is given his chance at a place on the general election ballot before the others have had a chance to capture the loyalty and commitment of the voters.

In many, but admittedly not all, respects the candidate seeking to obtain signatures on a nominating

petition has an easier route to the general election ballot than candidates who must run in primary elections. The evidence offered by the State through Professor Smolka and Willard A. Morris, summarized above at pp. 5-7 establishes these advantages. First, the independent candidate does not have to defeat any particular opponent or opponents in order to gain a place on the general election ballot. Secondly, the number of signatures which he must obtain is almost invariably less than the number of votes which a candidate in a primary election must obtain in order to gain his party's nomination. Third, the independent candidate, at least in Maryland, is given a longer period of time in which to "campaign" for his nominating signatures — since the candidate in a primary election must focus his campaign during a period immediately prior to an election so as to have the greatest impact on the voters and on voter turnout, while the independent candidate need only approach and appeal to a particular voter at a single moment in time (the moment when he asks for the signature) of the candidate's own choosing and, if rebuffed, may later return to that same voter to try again. Fourth, the choice made by a voter in a primary election is an irrevocable one in which he must choose one among several candidates, whereas the choice made by a voter signing a nominating petition is not irrevocable since the voter may withdraw his signature prior to the filing of the petition or may refuse to sign once and then sign when later approached and may, in any event, still vote for another candidate in his party's primary election. The fact that the choice is neither exclusive nor irrevocable in the case of the signing of a nominating petition makes it easier to persuade the voter to exercise that choice in favor of the candidate. And finally, the primary election candidate must get his supporters to

physically go to the polls to vote for him whereas the petition candidate can go to the voters in their homes or elsewhere to get their votes.[9]

We do not mean to suggest that it is easy for an independent to gain a place on the general election ballot or, as the lower court suggested we had urged, that party and independent candidates have identical routes to the ballot. Indeed, neither the route to the general election ballot nor the path to ultimate victory is easy for any candidate. However, a thorough examination of the treatment accorded primary and independent candidates by Maryland law and of the problems inherent in either avenue to the general election ballot will demonstrate that "it is problematical at best which [alternative] is more onerous in fact." *American Party of Texas v. White, supra* at 783 n. 16, and that the Section 7-1(e) filing deadline is not "excessively" burdensome.

Finally, it can hardly be contended that requiring party primary candidates and independent candidates to file their certificates of candidacy at the same time constitutes discrimination such as to call into play substantial or compelling justification for the scheme. In numerous cases courts have pointed to this parity as an additional reason for upholding various state election schemes. For example, in *Jenness v. Fortson,* 403 U.S. 431, 433-34 (1970), this Court specifically acknowledged the parity defense in approving the Georgia election laws, when it stated:

> "The total time allowed for circulating a nominating petition is 180 days, and it must be filed on

[9] In addition, Maryland law does not control or restrict contributions or expenditures relative to the circulation of nominating petitions but does apply to primary election contributions and expenditures. While this distinction does not apply to candidates for federal office (like Bradley), it is true for all State office candidates.

> the second Wednesday in June, the *same deadline that a candidate filing in a primary must meet.*" (emphasis added)

See also *Storer v. Brown, supra,* at 733, where the Supreme Court noted of California's election scheme:

> "The independent candidate need not stand for primary election but must qualify for the ballot by demonstrating substantial public support in another way. Otherwise, the qualifications required of independent candidates are very similar to, or identical with, those imposed on party candidates."

A pre-primary filing deadline for all candidates was also present in *Jackson v. Ogilvie,* 325 F. Supp. 864, 867 (N.D. Ill. 1971), *aff'd* 403 U.S. 925 (1971), where a challenge to Illinois' election laws was rejected. See also *Pratt v. Begley,* 352 F. Supp. 328 (1970), *aff'd* 409 U.S. 493 (1972) where a three-judge federal court upheld a filing deadline for independents which occurred seven months before the general election:

> "The statute is not unconstitutionally discriminatory. It does not make it any more difficult for an independent candidate to have his name placed on the ballot than a party candidate. The statute simply requires all potential candidates, whether Democrat, Republican or Independent, to file for nomination on the same date." 352 F. Supp. at 330.

See also *Auerbach v. Mandel, supra,* where the lower court in its oral opinion noted that Maryland's uniform filing deadline enabled *all* candidates "to be known at the same time."

Even if the uniform filing deadline for Maryland candidates were found to be excessively burdensome on an independent's rights and discriminatory in favor of party candidates, the statute is justified by a multitude of legitimate State interests. Of those interests proffered by the State in support of its simultaneous filing deadline for all candidates (see pp. 7-8 infra), most

of which were neither advanced in *Salera* nor treated by the lower court here, two stand out as particularly significant. These are the preservation of a necessarily early Presidential preference primary for Maryland voters and the placing of all candidates on an equal footing.

What the lower court failed to realize is that a Presidential election year puts greater burdens on *all* candidates than off-year elections. Although an independent must gather and file his signatures months before the general election, a primary victor must stretch his budget to similarly extend his campaign over a period of at least 8 months before the general election. And voters are faced with a greater prospect of confusion as elections, both national and local, become a year-long preoccupation. But the State quite understandably has determined that a May primary is important in Presidential election years in order to give Maryland voters a role in selecting the Presidential candidates and to increase voter participation in the State electoral process. The lower court's decision demands that the State either forgo this role for its voters *or* favor independent candidates over primary candidates by giving them a filing deadline on or after the date of the primary elections. By allowing later perfection of filings by independent candidates, the way is open to engage in some of the time-honored election tricks which invariably confuse the voters and distort the outcome. For example, one party's nominee might await the outcome of the (other party's) primary and then determine that it would be to his advantage to promote the candidacy by petition of a third candidate for the purpose of artificially siphoning off votes which would otherwise go to the other party's nominee. This might be accomplished either by promoting an independent candidate with a name or political appeal

similar to the opponent. The lower court's "alternative means" — that the State permit an independent to file his certificate of candidacy at the same time as primary candidates but demand the necessary signatures on or after the primary election — would not resolve this problem. Unscrupulous party candidates could still encourage the launching of numerous "protective" petition candidates either to confuse their opponents or to preserve their ability to siphon off the votes when the contingency develops. Nor are such schemes in Maryland electoral politics merely the products of a fertile imagination. Siphoning votes via third candidacies is a hard reality and almost a rule of the game. See *Reeves v. Reeves*, 275 Md. 599 (1975), which involved the siphoning off of votes in a primary by a "name's-the-same" candidate. Furthermore, such a scheme would impose heavy costs in terms of voter confusion and the deferral of full political debate.[10]

The worst fallout from the *Bradley* court's rejection of the proffered State interest in placing all candidates as far as possible on an equal footing[11] is that primary candidates may now have a valid claim of discrimination, a fact this court was distinctly aware of in *Jenness*

[10] As a substantial interest, the State contended below that § 7-1(e) forced an independent candidate to "surface" as far as the electorate was concerned to face the issues the primary candidates were debating with their opponents. Although "public discussion [by candidates] is a political duty", *Buckley v. Valeo, supra*, 46 L. Ed. 2d at 707, Appellee Bradley sought to avoid this obligation during the signature gathering period by instructing volunteers circulating petitions: "Do not discuss issues."

[11] Whatever differences that can conceivably be said to exist in the State's treatment of independent and primary candidates can be laid to the nature of their candidacies and the necessity of separating independent signature gathering campaigns from a primary election campaign to avoid voter confusion.

v. Fortson.[12] The lower court belittled the primary candidate's need to know the identity of the independent candidate at filing time because at that point he did not know the identity of his general election opponent from the opposite party. Such reasoning ignores the fact that a primary candidate always knows that he will have an opponent from the opposite party. However, under the lower court's "alternate means", he would not know he was to have in addition an independent opponent until after the primary election and possibly well into his general election campaign, perhaps after a substantial amount of campaign funds had already been spent or committed in different directions.

The lower court also emphasized that an independent candidate would not know who his opponents were until after the primary. However, *as of the filing date*, an independent does not truly know whether he himself will qualify for the general election ballot. In

[12] At 403 U.S. 440, this Court said:

"The appellants' claim under the Equal Protection Clause of the Fourteenth Amendment fares no better. This claim is necessarily bottomed upon the premise that it is inherently more burdensome for a candidate to gather the signatures of 5% of the total eligible electorate than it is to win the votes of a majority in a party primary. That is a premise that cannot be uncritically accepted. Although the number of candidates in a party primary election for any particular office will, of course, vary from election to election, the appellee's brief advises us that in the most recent election year there were 12 candidates for the nomination for the office of Governor in the two party primaries. Only two of these 12, of course, won their party primaries and had their names printed on the ballot at the general election. Surely an argument could as well be made on behalf of the 10 who lost, that it is *they* who were denied equal protection vis-à-vis a candidate who could have had his name printed on the ballot simply by filing a nominating petition signed by 5% of the total electorate."

light of the 35-day validation process and the possibility of legal challenges to the petitions, he may not be certain of his own status until after the primary election. In the present case, the court's opinion was filed one day before the May 18 primary.

This tunnel vision of the lower court is further evidenced by its sole focus on the respective burdens of primary *contestants* and *potential* independent candidates and its blindness to the situation of primary *victors* and independents who qualify for the general election ballot. Maryland's 70 day pre-primary filing deadline allows 35 days for signature validation and another 35 days for challenges, with the result that *all* general election candidates are known to each other and the voters at approximately the same time. However, under the lower court's rule, primary victors are forced to run "in a vacuum" for at least 35 days (in the present case from May 18 to July 13 plus 35 days) and a successful independent gets a late start in the general election since he does not know his status until at least 35 days after he submits his signatures (here mid-August).

In short, instead of Maryland's carefully-designed, workable statutory scheme for adjusting the relative burdens of obtaining general election ballot access, the lower court, out of concern for excessive burdens and discrimination, has created in Sisyphean fashion,[13] a system that unjustly discriminates against primary candidates and imposes greater hardships on all candidates.

[13] In ancient mythology, Sisyphus was condemned to roll a heavy stone to the top of a hill only to see it roll back again. T. Bullfinch, *Bullfinch's Mythology* 270 (1947).

III.

ALTHOUGH *HICKS v. MIRANDA* REQUIRES THAT EFFECT BE GIVEN TO A RESULT THIS COURT REACHES THROUGH SUMMARY AFFIRMANCE, IT DID NOT RELIEVE THE DISTRICT COURT OF ITS OBLIGATION TO DISTINGUISH AND HARMONIZE PRIOR SUMMARY AFFIRMANCES AND WRITTEN DECISIONS OF THIS COURT, NOR DID IT SUGGEST THAT SUMMARY AFFIRMANCES REPRESENT AN ADOPTION OF THE PRECISE REASONING OF THE LOWER COURT.

A fundamental issue in this case is whether lower courts should be permitted to read the mind of this Court in preference to its words. On two occasions the court below opined on the effect to be given particular summary affirmances of this Court. The three-judge panel noted that the issue of the constitutionality of the Section 7-1(e) filing deadline had been raised in this Court in *Auerbach* but said "we do not believe that the Supreme Court decided it". (App. p. 11a). Yet, despite the fact that the issue as framed for this Court in *Salera* wove together the constitutionality of both the signature gathering period and filing deadline for independent candidates in Pennsylvania,[14] the lower court here said "we are confident that *Salera* did decide the issue before us", (App. p. 8a.) *viz.*, the validity *vel non* only of a pre-primary filing deadline. Absent in the court's opinion was any attempt to employ the methodology of *Storer* and *Jenness* or any serious attempt to distinguish the substantial amount of authority in support of

[14] According to Pennsylvania's Jurisdictional Statement in *Salera*, the relevant question was framed: "Whether the United States District Court for the Eastern District of Pennsylvania, sitting as a three-judge court pursuant to 28 U.S.C. §2284, committed error in ruling that, under the Pennsylvania Election Code, the requirement that candidates of political bodies collect signatures for their nomination papers between the tenth and seventh Wednesdays prior to the primary election, *and* file such nomination papers no later than the seventh Wednesday prior to the primary election, violated a constitutional right secured by the United States Constitution." (Emphasis added)

the constitutionality of Section 7-1(e). In effect, the lower court declared that the summary affirmance in *Salera* had overruled the following written and summary decisions of this Court: *Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262 (S.D. Ohio 1970), *aff'd sub nom. Sweetenham v. Gilligan*, 409 U.S. 942 (1972) (upholding a filing deadline of 90 days before the primary and 9 months before the general election); *Pratt v. Begley*, 352 F. Supp. 328 (D. Ky. 1970), *aff'd* 409 U.S. 943 (1972) (upholding a filing deadline of 55 days before the primary and 7 months before the general election); *Jenness v. Fortson*, 403 U.S. 431 (1970) (upholding a filing deadline of 69 days before the primary and 5 months before the general election even though this provision was coupled with a 180-day signature-gathering period and a 5% signature requirement); and *Williams v. Rhodes*, 393 U.S. 23 (1968) (where the filing deadline later sustained in *Sweetenham* was struck down *but only* in conjunction with restrictive provisions of Ohio law which made it virtually impossible for a nonparty candidate to obtain ballot access).[15] Apparently of little concern to the panel below during this devastation of this Court's ballot access cases was the fact that less than two months before the *Salera* affirmance *Jenness* was relied upon by this Court to sustain the constitutionality of certain provisions of the Federal Election Campaign Act in *Buckley v. Valeo, supra*, at 733-36, or that the *Auerbach* and *Wood* cases were cited favorably in *Storer, supra*, at 739, n. 10 when this Court last gave plenary consideration to a ballot access case.

[15] In addition, the lower court laid waste to *Auerbach, Maryland People's Party* and *Wood v. Putterman*, the three cases between 1970 and 1973 in which this Court gave summary, favorable consideration to the constitutionality of Maryland's nomination by petition process (which has not since changed).

The lower court cited *Hicks v. Miranda*, 422 U.S. 332 (1975), as authority for its out of hand dismissal of the precedential value of the above decisions. However, *Hicks v. Miranda* stands only for the unchallenged propositions that a summary affirmance by the Supreme Court is a decision on the merits in a case and that lower courts are not free to disregard such decisions. It does not elevate the lower court opinion to equal footing with the words of this Court, nor does *Hicks v. Miranda* prescribe the weight to be given the lower court's reasoning in light of a summary affirmance that follows hard on the heels of a line of written and summary decisions which suggest or mandate a result contrary to that reasoning but consistent with the result in the case.[16] In light of the seriousness with which this Court regards the prospect of overruling a prior decision, lower courts should have a similarly weighty obligation to reconcile a single summary affirmance with other Supreme Court decisions of recent vintage by employing the methodology set out in this Court's written decisions.[17] Any other course might

[16] As noted earlier, we have no quarrel whatever with the result of striking down a three-week signature-gathering period which ends as early as was the case in *Salera*.

[17] The lower court here avoided numerous opportunities to distinguish *Salera* from the present case. First and foremost was the requirement of the Pennsylvania statute that signatures be gathered within 21 days. The three-judge court for the District of Maryland, like the lower court in *Salera*, was all too quick to proclaim such a feature as *per se* unburdensome under all circumstances, a course which this Court eschewed in *Storer*, 415 U.S. at 740. In *Storer* this Court deemed a 24-day period to gather signatures for an independent Presidential candidate as "a substantial requirement" and remanded the case for a determination of whether this provision coupled with other restrictive features of California law placed too great a burden on independent candidates. As a practical matter, the absence of such a substantial restriction from Maryland's nomination by

invite lower court judges to decide cases on the basis of their predilections and might deter this Court, out of an abundance of caution, from making as frequent use of the necessary technique of summary disposition of cases. Indeed, a summary affirmance here would simply invite the kind of bad guesswork and refusal to reasonably reconcile recent decisions of this Court which characterized the opinion of the lower court here and its blind adherence to its own perception of the import of *Salera*.

A summary affirmance in this case would encourage lower courts to rummage through often sloppily prepared jurisdictional statements to decipher this Court's thinking rather than to read its written opinions and apply their methodology. Finally, a

petition law renders the scheme challenged by Bradley infinitely less burdensome than the Pennsylvania statute. Moreover, even the lower court's opinion contained repeated references to the unconstitutional remoteness from the general election of the "signature gathering period". 399 F. Supp. at 1266-67. *Salera* is also distinguishable in a number of other important respects. It involved a 218-day period before the general election in a non-Presidential election year. In such cases, Maryland requires only a 120-day period. Moreover, the element of the Presidential preference primary present in this case necessarily strengthens the legitimate state interests so summarily rejected in *Salera*. This case also involves substantial interests not presented or discussed in *Salera*, but considered substantial by this Court in prior cases. In addition, *Salera* is distinguishable on the basis of facts the three-judge court in Pennsylvania thought important, *viz.*, the status of the parties. In *Salera* the statute was challenged by a class who expressed its intention to vote for the candidate. 399 F. Supp. at 1262 N. 4. In the present case the only intent averred by Bradley's supporters is their desire to see his name on the general election ballot. Finally, the *Salera* court even determined that the bad weather petition circulators must face when gathering signatures at an early date was important in gauging burdensomeness. 399 F. Supp. at 1266. Evidence before the Bradley court here indicated that in 1975-76 Maryland had one of its mildest winters in history.

summary affirmance in this case would sanction the District Court's "divide and conquer" methodology and lead lower courts to strike down other specific state election provisions (such as the one in this case) heretofore upheld by this Court in assessing total statutory schemes for ballot access.

CONCLUSION

In summary, Appellants urge that the District Court has abdicated its duty to reconcile *Salera* with other decisions of this Court, to employ the methodology set out in *Storer* and *Jenness*, and to gauge the impact of Maryland's candidate filing date in light of other features of the State's election law and the realities of independent ballot access in Maryland. For these reasons, the State contends that the lower court abused its discretion in enjoining State election officials from refusing to accept additional signatures submitted by Appellees after the statutory deadline.

The foregoing plainly demonstrates that this Court has jurisdiction of the appeal and that the questions presented are substantial.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,
HENRY R. LORD,
Deputy Attorney General,
GEORGE A. NILSON,
Assistant Attorney General,
ROBERT A. ZARNOCH,
Assistant Attorney General,
1400 One South Calvert Bldg.,
Baltimore, Md. 21202,
Attorneys for Appellants.

APPENDIX

In the United States District Court
for the District of Maryland

Civil Action

T 76-638

Bruce Bradley, John F. Falconer, John McGrath, Gloria Fazio, Paul Poff,

Plaintiffs,

v.

Honorable Marvin Mandel, Francis B. Burch, Attorney General, Willard A. Morris, Administrator, State Administrative Board of Election Laws, Reginald A. Asplen, Chairman, State Administrative Board of Election Laws, Theodore N. Clark, Vice Chairman, State Administrative Board of Election Laws, Ann Schissler, State Administrative Board of Election Laws, James W. Johnson, Jr., State Administrative Board of Election Laws, Stephen R. Fegan, State Administrative Board of Election Laws,

Defendants.

Jon T. Brown, Esquire, James D. Pembroke, Esquire, and Duncan, Brown, Weinberg & Palmer, Attorneys for Plaintiff; Francis B. Burch, Esquire, Attorney General for the State of Maryland, Robert A. Zarnoch, Esquire, George Nilson, Esquire, Assistant Attorneys General for the State of Maryland, Attorneys for Defendants.

Before Winter, Circuit Judge, Thomsen, Senior District Judge, and Kaufman, District Judge.

Argued May 12, 1976 Decided

WINTER, Circuit Judge:

Maryland permits the selection of candidates at a general election for statewide and federal offices by either of two methods: by primary elections by political parties whose status as political parties has been theretofore established, and by nominating petition. § 4-1.[1] Primary elections are fixed by Maryland law to be held on the second Tuesday after the first Monday in September in any year in which there shall *not* be an election for President and Vice President. In any year in which there *shall* be an election for President and Vice President, the primary election shall be held on the third Tuesday in May. § 5-2. When a candidate who is registered as an independent, or who is a member of or affiliated with a partisan organization which is not a political party or is not a member of a political party whose nominees must be nominated by primary election, seeks nomination by petition, he is required to file a certificate of candidacy together with nominating petitions signed by not less than three percent of the registered voters who are eligible to vote for the office for which he seeks nomination. § 7-1. His nominating petitions must be delivered to the Boards of Elections Supervisors for the counties, or Baltimore City, in which the signers on the paper are alleged to reside "not later than 9:00 p.m. on the Monday which is ten weeks or seventy days before the day on which the primary election should be held under the primary election law . . . ." § 7-1(e). A person seeking a nomination in a primary election is similarly required to file a certificate of candidacy for nomination "not later than nine p.m. on the Monday which is ten weeks or seventy days before the day on which the primary election shall be held under the primary election law," § 4A-3, but he may withdraw his candidacy up to 45 days before the primary. § 9-1.

[1] The Maryland election laws are codified in Art. 33, 3B Ann. Code of Md. (1976). All section references made herein will be to Art. 33 unless otherwise indicated.

The net effect of these provisions in the 1976 presidential election year is that candidates for nomination, whether by the primary election route or by the petition route, must have filed their certificates of candidacy by March 8, 1976. A candidate seeking nomination by the petition route must have also filed nominating petitions containing the requisite number of signatures by March 8, 1976. A candidate by the primary route had the right to withdraw his certificate of candidacy until April 2, 1976. The primary election will be held on May 18, 1976, and the general election will be held on November 2, 1976. Md. Const. Art. XV § 7.

I.

Plaintiff Bruce Bradley is an independent candidate for the United States Senate from the State of Maryland. The remaining plaintiffs are citizens of and registered voters in the State of Maryland who wish to have the name of Bruce Bradley placed upon the ballot for the Maryland general election to be held November 2, 1976. Defendants are various election officials of the State of Maryland. The facts which give rise to this litigation follow:

On March 8, 1976, Bradley filed nominating petitions with twenty-one county election boards in the State of Maryland, including the City of Baltimore. The petitions were accompanied by 53,239 signatures of purported citizens of the state. Based upon the number of voters eligible to vote in the general election, 51,155 valid signatures were required to effect a nomination by petition.[2]

Subsequent to the filing of the petitions and signatures, the State Administrative Board of Election Laws determined that only 42,049 signatures, valid under the

[2] The "validity" of signatures is governed by other provisions of § 7-1. The various requirements are that they be of persons registered to vote, that only signatures of persons registered in the same jurisdiction appear on the same page, that a signer's residence be appended, that the name of a signer be printed immediately below his signature, etc.

numerous requirements of § 7-1, had been filed by Bradley and that this number was insufficient to qualify him to appear on the ballot for the general election in November 1976.

Bradley ceased soliciting signatures on nominating petitions after March 8, 1976. He filed this complaint on April 30, seeking declaratory and injunctive relief on the two principal grounds that (1) the provision of the Maryland law requiring him to file the requisite number of valid signatures to support his certificate of candidacy by March 8, 1976, was invalid because of its remoteness from the general election to be held November 2, 1976 — his claim being that the provision constitutes a violation of the first and fourteenth amendments because it places an unreasonably heavy burden on Bradley to have his named placed on the ballot, and restricts the rights of the remaining plaintiffs to associate freely for the purpose of expressing constitutionally protected political beliefs and to exercise their right to vote, and also that it denies equal protection of the laws because the unnecessarily burdensome requirements of filing nominating petitions at a date far removed from the date of the general election is not applicable to major party candidates — and (2) that the provisions of the Maryland election laws relating to the form and procedure for obtaining "valid" signatures to the nominating petition on their face and as applied deny all of the plaintiffs their first and fourteenth amendment rights by placing an undue burden on Bradley's right to have his name placed on the ballot and thereby restrict the rights of the remaining plaintiffs to associate freely for the purpose of expressing protected political beliefs and exercising their right to vote.

On April 30, the district judge to whom application was made entered an order, with the consent of all parties, permitting Bradley to solicit additional signatures to support his certificate of candidacy and to file the same with defendants until May 18, 1976, but not requiri ıg defendants to take any action thereon until further order of the court. A three-judge court was duly

convened, evidence taken and argument heard, and the case submitted to the court on its merits, including plaintiffs' motion for a preliminary and permanent injunction and declaratory relief, defendants' motion to dismiss, and defendants' motion for summary judgment. At the hearing, defendants' motion to dissolve the three-judge court was summarily denied since the court thought that a substantial question of the validity of a statewide provision of the Maryland election law had been raised.

II.

We address ourselves solely to plaintiffs' claim that the provision of § 7-1(e) requiring the filing of signatures by March 8, 1976 is invalid, because we think this question is determinative of the case. Salera v. Tucker, 399 F.S. 1258 (E.D. Pa. 1975), aff'd summarily sub nom. Tucker v. Salera, ___ U.S. __ 44 U.S.L.W. 3526 (March 22, 1976), is the controlling authority, and we conclude that it requires that plaintiffs be granted relief.

Salera was a decision by a three-judge court which considered two aspects of Pennsylvania's election law with regard to nominating petitions. The Pennsylvania statute, unlike the Maryland statute, imposed a three-week limitation on gathering signatures for nominating petitions and, much like the Maryland statute, required that the signatures supporting a nominating petition be filed not later than 218 days before the general election in a year in which a President and Vice President would not be elected, and 244 days in a presidential election year.[3]

The validity of the statute was attacked on the grounds that (1) the three-week limitation on gathering signatures was an unconstitutional burden on access to the ballot, and (2) the remoteness of the signature gathering period from the general election unconstitutionally impaired the ability of the candidate to qualify

[3] In Maryland, in 1976, the signatures were required to be gathered and filed 239 days before the generàl election.

as an eligible independent candidate. The three-judge court considered these claims separately. With respect to the first, it held, on the authority of Storer v. Brown, 415 U.S. 724 (1974), that "the three week period is constitutional as applied to plaintiffs." 399 F.S. at 1265. The court held the statute invalid, however, on the basis of plaintiffs' second attack, and its reasoning in this regard warrants closer analysis.

With respect to the claim of remoteness, the court found that the termination of signature gathering 218 days before the general election in a non-presidential election year substantially burdened the ability of independent candidates to gain access to the ballot because it forced them to gather signatures before the issues of the upcoming election had been defined, it forced them to complete the signature gathering process in a political vacuum seven weeks before the major parties choose their candidates, it made the task of generating interest among potential voters more difficult than it would be if the signature gathering period were scheduled at a point closer to the general election, and it required that signature gathering be conducted during a time of the year of prevailing adverse weather conditions — another species of burden. 399 F.S. at 1266. We do not make detailed findings of fact in the instant case, but the evidence before us leads us likewise to conclude that the March 8 termination date of the signature gathering period in the 1976 general election in Maryland substantially burdened the ability of Bradley to gain access to the ballot and substantially burdened the ability of the other plaintiffs to have Bradley as a candidate of their choice appear on the ballot at the general election for all of the reasons assigned by the *Salera* court.

After finding the facts, the *Salera* court considered the argument that three state interests arguably were served by holding the nomination paper circulation period as far in advance of the general election as did Pennsylvania. The first, which was rejected, was to provide sufficient time to resolve challenges to the nomination papers and to prepare the ballots in a

deliberate and orderly fashion. Under the evidence, the *Salera* court found that Pennsylvania needed far less time to accomplish these purposes than that which was established under the Pennsylvania statute. 399 F.S. at 1267. The same is true in Maryland. Under Maryland law as applied in 1976, the validity of a nominating petition was required to be determined by April 12, "five weeks or thirty-five days before the day on which the primary election should be held under the primary election law," § 7-1(e), and the certification of candidates whose names will appear on the ballot of the general election is not required to be made to the local Boards of Election Supervisors until August 28, 1976, "[n]ot less than sixty-five days before a general election at which the voters elect the President of the United States . . .," § 8-4. In the instant case, the validity of Bradley's nominating petition was determined by April 12. Presumably a period equal to the time elapsed between March 8 and April 12 (thirty-five days) would be sufficient even if the ascertainment of validity were not undertaken until a later date. The date for certification of candidates is sufficiently removed that validation of the nominating petition could well begin at a later date.

Next, the *Salera* court considered the state's concern that defeated or disaffected primary candidates not use the independent nomination process to thwart the will of the party majority or to wreak vegeance upon the candidate chosen by the party majority. The court concluded that Pennsylvania had accomplished this purpose in other ways. So has Maryland, because Maryland prohibits any person who has been defeated for the nomination for any office in a primary election from having his name printed on the ballot at the succeeding general election as a candidate for any office, § 8-2, and limits nomination by petition to candidates who are registered as independents, or who are members of or affiliated with a partisan organization which is not a political party or who are not members of a political party whose nominees must be nominated by means of primary elections. § 7-1(a).

A third possible state interest which was considered was the state's interest in the intelligent exercise of the franchise by those voting in the primary, i.e., that a voter in a primary can cast his vote more knowledgeably and effectively if he knows which independent candidates will or will not be on the final ballot. The court rejected this as a validating interest because a primary voter would "not know the identity of a much more significant factor in the general election, i.e., the identity of the other major party candidate." 399 F.S. at 1268. We find this reasoning equally applicable in Maryland.

Finding no validating state interest to justify the remoteness of the cutoff date for garnering supporting signatures for the general election, and the resulting burden on the candidate seeking nomination, the court concluded that the cutoff date was invalid.

The Commonwealth of Pennsylvania, through its appropriate officials, appealed to the Supreme Court, and the decision of the three-judge district court was summarily affirmed. We have been furnished with the Commonwealth's jurisdictional statement and the plaintiffs' motions to affirm. We are advised that the Commonwealth filed no response to the motions to affirm. The plaintiffs took no cross-appeal, and we find it significant that in urging summary affirmance the plaintiffs, on the merits, urged that the district court correctly concluded that the remoteness of the cutoff period from the general election was invalid. Plaintiffs did not argue that the shortness of the period for gathering signatures, either alone or in combination with the remoteness of the cutoff period, supported the result.

Under Hicks v. Miranda, 422 U.S. 332 (1975), we are bound by the summary affirmance in *Salera*, if it can be fairly said that *Salera* decides the issue before us and is not distinguishable on any other ground. From our recitation of what was decided in *Salera* and the proceedings in the Supreme Court, we are confident that *Salera* did decide the issue before us. We reject defendants' argument that the shortness of the signature gathering period under Pennsylvania law contributed to the decision of the district court or the Supreme Court. We think that all that these two courts decided was that the remoteness of the cutoff date of the signature gathering period from the general election constituted an impermissible burden on the Pennsylvania candidates' access to the ballot and the other plaintiffs' right to vote.

We therefore turn to the question of whether *Salera* is distinguishable from the instant case:

Maryland urges that there is present in this case a validating compelling state interest not considered in *Salera*, i.e., the desirability of treating partisan and independent candidates alike by requiring all candidates to file on the same date. This argument does not persuade us. Partisan and independent candidates are not treated alike under Maryland law, nor do we think that Maryland has drawn a close analogy between them. Signature gathering by an independent candidate is not the equivalent of the filing of a declaration of candidacy by a partisan candidate; it is the equivalent of the primary election. Maryland's equal treatment argument would have validity only if the deadline for the filing of petitions was the same date as the primary election, but it is not. Moreover, Maryland's professed desire to treat partisan and independent candidates alike does not compel fixing the cutoff date for filing the requisite number of valid signatures 70 days before the primary election. Quite readily, Maryland could require independent candidates to file a declaration of candidacy at the same time as partisan candidates and then extend the date for the submission of signatures to the date of the primary election. In summary, we think that an "equal treatment" rationale is faulty and the attempt to distinguish *Salera* on this ground fails.

Maryland next argues that *Salera* should not be given the construction that we place upon it because a consequence would be that our decision in Auerbach v. Mandel, Civil No. 72-141-N, and Barnhart v. Mandel,

Civil No. 72-142-N (D. Md. March 3, 1972), aff'd summarily, 409 U.S. 808 (1972), and Maryland People's Party v. Mandel, Civil No. 72-865-K (D. Md. September 5, 1972), aff'd summarily, 410 U.S. 901 (1973), would be overruled, and it cannot lightly be supposed that in affirming summarily in *Salera* the Supreme Court intended to overrule *Auerbach, Barnhart,* and *People's Party sub silentio.* We do not agree that the question presented in the instant case was decided in either *Auerbach, Barnhart,* or *People's Party,* although we recognize that a dictum in *Auerbach* may have indicated a contrary view from that which we take now.

In *Auerbach, Barnhart,* and *People's Party,* we were presented with the question of how a new political party could nominate a candidate. There the claim was made that a new political party could nominate a candidate only by qualifying as a "political party" and that it was an impossibility for a new political party thus to qualify with the result that its candidates were barred from the ballot. *People's Party* was decided upon the authority of *Auerbach; Barnhart* was decided on the ground of laches. In *Auerbach,* we decided that, *on the basis of statutory construction,* § 7-1(a) permitted a candidate for public office, who is a member of a partisan organization which is not a political party, to be nominated by petition. We specified that we decided the case "as a matter of statutory construction," and we added, "it seems to us that there is no constitutional question which the suit of the People's Party raises, and as a consequence, we find no basis for giving relief. . . ." True, in practical recognition that we decided the case on March 3, 1972, and March 6, 1972 was the cutoff date under Maryland law for the filing of a petition of candidacy and the obtention of the signatures necessary to make that petition effective, we added:

> We recognize that this is a heavy burden to be met if somebody is to run. We can only say this, that viewed in the perspective of its reasons, March 6th in itself is not an unreasonable time when you consider the need and the State's legitimate interest in closing the registration books in advance of an election and requiring also that all candidates, whether they be candidates in a primary election for one of the major parties or candidates for a party not having the right to resort to nomination by primary or a candidate of a partisan organization which is not a political party, to be known all at the same time.

With respect to the language just quoted, we reiterate that it was pure dictum.[4] While it seemed to reflect the law at the time it was uttered,[5] we are not now persuaded of its correctness, factually or legally. Factually, further examination of the Maryland statutes and the decision of the district court in *Salera* persuades us that the Maryland filing date requirement does not permit all candidates to know all of their opponents at the same time. A primary candidate of a major political party does not know the nominee of an opposing political party—usually the most significant information to be considered by the candidate in concluding whether to run. Nor does a candidate necessarily know his opponents in the primary election in which he seeks to run at the time that he files his

[4] An examination of the jurisdictional statement, motion to affirm and response thereto, filed in the Supreme Court in *Auerbach* and *Barnhart,* discloses that the plaintiffs did seek to raise in the Supreme Court the question of the invalidity of the remoteness of the filing date for a petition of candidacy from the general election as a ground for reversal. But since that issue had not been fully litigated before us, we do not believe that the Supreme Court decided it.

[5] *See* Socialist Labor Party v. Rhodes, 318 F.S. 1262, 1273 (S.D. Ohio 1970) (three-judge court), aff'd sub nom. Sweetenham v. Gilligan, 409 U.S. 942 (1972) (deadline 9 months before general election upheld); Pratt v. Begley, 352 F.S. 328, 330 (D.Ky. 1970) (three-judge court), aff'd 409 U.S. 943 (1972) (deadline 7 months before general election upheld); Jackson v. Ogilvie, 325 F.S. 864, 867 (N.D. Ill.) (three-judge court) (deadline 60 days before general election upheld), aff'd 403 U.S. 925 (1971); Jenness v. Fortson, 403 U.S. 431, 434-35 (1970) (deadline 150 days before general election upheld); *cf.* Williams v. Rhodes, 393 U.S. 23, 27 (1968) (deadline 270 days before general election, in combination with other restrictive provisions, struck down).

certificate of candidacy. Certificates many times are not filed until the last hour of the filing period with the result that knowledge of the identity of his opponent is lacking, and even if known it may be gained too late to make a considered judgment of whether to run. Even if the identity of his opponent is known in time for reflection upon the question of whether to file, under Maryland law that opponent may withdraw before the actual primary election. Again, to the extent that dissemination of knowledge to all is a valid state interest, it could be accomplished in the case of an independent candidate by having him file a certificate of candidacy without requiring him to complete the obtention of the requisite valid signatures seven weeks before the date of the primary election.

Legally, for the reasons we have stated, we think that *Salera* decides the issue before us, and as the latest expression of the Supreme Court, we are bound to follow it.

III.

For the reasons set forth above, we conclude that plaintiffs should be given declaratory and injunctive relief. A declaration will be granted that the time limitation of § 7-1(e) that nominating petitions shall be completed and filed 70 days before the date on which the Maryland 1976 presidential primary election shall be held constitutes an unconstitutional burden on Bradley's right to become an independent candidate and on the rights of the other plaintiffs to exercise their franchise to vote.

We formulate injunctive relief as follows: We have indicated that we think that constitutionally Bradley at least should have had the right to collect the requisite number of valid signatures until the date of the primary election.[6] The evidence and Maryland's schedule of certification dates establish, however, that administratively it would be feasible for Maryland to afford Bradley a period well beyond that date to complete the signature gathering process.

[6] From the evidence before us and the time schedule for certification of primaries set forth in the Maryland statute, Bradley may be entitled to more, but that case is not before us and we do not decide it.

Bradley was not authorized to gather supporting signatures for the period March 9 to April 30, 1976, when the court ordered that the enforcement of § 7-1(e) be suspended in part. This period comprised 53 days. We therefore conclude that Bradley should be given 53 days after the date of the May 18 primary election to collect and file with defendants additional signatures to support his petition of candidacy, i.e. to the close of business on Saturday, July 10, 1976, or, if that is treated as a holiday, to the close of the next succeeding business day. Thereafter defendants should determine the validity of the same in accordance with the applicable provisions of Maryland law, and if Bradley has obtained and produced a total of 51,155 valid signatures, including those filed on March 8, 1976, defendants shall treat him as properly nominated by petition and certify him as a candidate to appear on the ballot in the general election in accordance with the other applicable provisions of the Maryland statute.

Counsel are requested to agree on a form of final order and present the same within ten days.

HARRISON L. WINTER,
United States Circuit Judge,

ROSZEL C. THOMSEN,
Senior United States
District Judge,

FRANK A. KAUFMAN,
United States District Judge.

ORDER

In The United States District Court
For The District of Maryland

Civil Action No. T-76-638

Bruce Bradley, et al., *Plaintiffs,*

v.

Marvin Mandel, et al., *Defendants.*

This cause came on to be heard on plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief. It was stipulated that the evidentiary hearing conducted before this court on the Motion for Preliminary Injunction would constitute the trial on the merits of this cause and that further evidentiary proceedings before this court would not be required. The court having considered the complaint, the motion, the memorandum and affidavits submitted in support thereof, and the opposition thereto; and having taken evidence and heard oral argument thereon by counsel; and it being determined for reasons stated in the court's written opinion filed May 17, 1976, that Plaintiffs are being deprived of their constitutional rights and will suffer immediate and irreparable injury by the operation of Section 7-1(e) of Article 33 of the Annotated Code of Maryland (1976 Replacement Volume) insofar as that provision requires an independent candidate to file nominating petitions containing the requisite number of signatures by March 8, in the 1976 presidential election year; and the court having made its findings of facts and conclusions of law, it is

DECLARED that § 7-1(e) of Article 33 of the Annotated Code of Maryland (1976 Replacement Volume),

insofar as that provision requires an independent candidate to file nominating petitions containing the requisite number of signatures by March 8 in the 1976 presidential election year, denies the constitutional rights of Bruce Bradley to obtain a place on the ballot for the general election to be held in November, 1976, and the other plaintiffs to cast a vote for Bruce Bradley at said general election as the candidate of their choice; and it is

ORDERED, that defendants, their agents, servants, employees, and attorneys and all persons in active concert and participation with them be and they are hereby permanently restrained and enjoined from

1. Refusing to accept additional nominating petitions and signatures affixed thereto submitted on or before 5:00 p.m. July 13, 1976, on behalf of plaintiff Bradley;
2. Refusing to validate or cause to be validated, in accordance with the applicable provisions of Section 7-1(e) of Article 33, the additional nominating petitions and valid signatures affixed thereto submitted on behalf of plaintiff Bradley no later than five weeks or thirty-five days after July 13, 1976, or such earlier date as plaintiff Bradley certifies that he has filed all the additional signatures which he proposes to file;
3. Refusing to determine and declare as required by law promptly following such validation of nominating petitions and signatures affixed thereto whether the name of plaintiff Bradley will be placed on the ballot for the office of United States Senator in the general election to be held in Maryland in November 1976; and from
4. Refusing to place the name of plaintiff Bradley on the ballot for the office of United States Senator in the general election to be held in Maryland in November 1976 if it has been

determined that he has obtained 9,106 valid signatures in addition to those filed by March 8, 1976 and previously validated.

HARRISON L. WINTER,
United States Circuit Judge,

ROSZEL C. THOMSEN,
Senior United States
District Judge,

FRANK A. KAUFMAN,
United States District Judge.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

In The United States District Court
For The District of Maryland

Civil Action No. T-76-638

Bruce Bradley, et al., *Plaintiffs,*

v.

Marvin Mandel, et al., *Defendants.*

I. Notice is hereby given that all Defendants in this action hereby appeal to the Supreme Court of the United States from the final Order entered in this action on June 2, 1976, declaring the filing deadline for nominating petitions set forth in Section 7-1(e) of Article 33 of the Annotated Code of Maryland (1976 Replacement Volume) to be an unconstitutional denial of Plaintiff Bradley's right to obtain a place on the general election ballot and the other Plaintiffs' right to

vote for said candidate, and permanently enjoining Defendants from refusing to accept and validate additional signatures and nominating petitions gathered by Plaintiffs before July 13, 1976, a new deadline fashioned by the court for the Plaintiff Bradley.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript:

(1) Plaintiffs' Complaint and Memorandum in Support of Motion for Temporary Restraining Order, Preliminary Injunction and for Declaratory Relief with

(2) The Affidavits in Support of Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction and Declaratory Relief. (Plaintiffs' Exhibits 1-7.)

(3) Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment for the Defendants and Motion to Dissolve the Three Judge Court and Memorandum of Law.

(4) Statement of Professor Richard Smolka. (Defendants' Exhibit 1)

(5) Statement of State Elections Administrator Willard Morris and Appendices. (Defendants' Exhibit 2)

(6) Transcript of Hearing held May 12, 1976.

III. The following questions are presented by this appeal:

(1) Whether the United States District Court for the District of Maryland, sitting as a three judge court pursuant to 28 U.S.C. 2284, erred in examining in isolation the deadline under Maryland law for filing nominating petitions in a Presidential election year (seventy days before the primary election) without considering the other elements of Maryland's system of gaining access to a place on the general election ballot, and concluding that the

statutory deadline, standing by itself, constitutes an unconstitutional denial of Appellee Bradley's right to obtain a place on the general election ballot and the other Appellees' right to vote for him?

(2) Whether the District Court erred in concluding that *Hicks v. Miranda*, 422 U.S. 332 (1975), required it to give effect to every particular of the lower Court's decision in *Salera v. Tucker*, 399 F. Supp. 1258 (E.D. Pa. 1975), *aff'd summarily sub nom. Tucker v. Salera*, ___ U.S. ___, 47 L. Ed. 2d 727 (1976), so as to effectively overrule five recent summary decisions of this Court and to ignore the rationale of at least two written decisions of this Court?

(3) Whether, as a result, the District Court abused its discretion in enjoining Appellants from refusing to accept additional nominating petitions and signatures submitted by Appellees after the statutory filing deadline?

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,
GEORGE A. NILSON,
Assistant Attorney General,
ROBERT A. ZARNOCH,
Assistant Attorney General,
1400 One South Calvert Bldg.,
Baltimore, Maryland 21202
Attorneys for Appellants.

PROOF OF SERVICE

I, George A. Nilson, Assistant Attorney General, one of the attorneys for Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the third day of June, 1976, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the Plaintiffs by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of

record as follows: Jon T. Brown, Esquire and James D. Pembroke, Esquire, Duncan, Brown, Weinberg & Palmer, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006, and James M. Smith, Esquire, Gebhardt & Smith, Suite 3405, 222 St. Paul Street, Baltimore, Maryland 21202, Attorneys for Plaintiffs.

GEORGE A. NILSON,
Assistant Attorney General.

STATUES INVOLVED

Annotated Code of Maryland — Art. 33

NOMINATION BY PETITION

§ 7-1 General provisions.

(a) *Who may be nominated by petition.* — A candidate for any public office who is registered as an independent or who is a member of or affiliated with a partisan organization which is not a political party as defined in this article or who is not a member of a political party whose nominees must be nominated by means of primary elections, may be nominated by petition, as in this section provided. Nothing in this subsection applies to candidates or nominations for election to county boards of education.

(b) *Certificate of candidacy; filing fees.* — A candidate for public office seeking nomination by petition shall file a certificate of candidacy under the provisions of the subtitle "Certificate of Candidacy" of this article with a sworn statement attached that he has on file with the election board or the several boards of the State petitions signed by not less than three per centum (3%) of the registered voters who are eligible to vote for the office for which such nomination by petition is sought. The number of registered voters shall be determined as of the commencement of the four-month period before the primary election for which the nomination is sought. Candidates nominated by petition must pay the fee prescribed in § 4A-6 of this article in the same manner as candidates for nomination at a primary election, with the filing of the certificate of

candidacy of the candidate. Such fees shall be disposed of in the same manner as provided in § 4A-8 of this article.

(c) *Form of petition; affidavit.* — The signatures shall not be appended to one paper but shall be on separate papers, bearing one or more signatures and being no more than 8½ inches in width or 14 inches in length. Such paper shall not contain the names of persons residing in more than one county or in any county and in the City of Baltimore. Each signer shall append to his signature his residence, and the name of the county or city where he is registered as a voter, and immediately below the signature of any signer there shall be either printed or typed the name of the signer. Every paper shall be accompanied by an affidavit or affidavits made before a notary public, or other officer authorized to take oaths under the laws of this State, by one or more persons known personally to the notary public or other officer, and so certified by him and signed by the affiants, to the effect that the signers are known to such affiant or affiants to be registered voters of the county or city as set forth in the petition, and that the affiant or affiants personally saw the signers, in regard to whom he or they make oaths, sign the paper.

(d) *Restrictions on signers.* — No person shall join in nominating more than one nominee for each office to be filled; nor shall any person sign more than once for the same nominee for an office.

(e) *Verification of signatures; endorsement; delivery of petitions to boards and to State Administrative Board of Election Laws; determination of sufficiency of signers.* — Any paper which is to form a part of a certificate of candidacy shall be submitted to the board for the county or the City of Baltimore in which the signers on the paper are alleged to reside. The board shall give to anyone submitting any such paper or papers a signed receipt stating that the paper or papers are on file with the board. It shall be the duty of the several boards in the jurisdiction in which the signers are alleged to be registered voters to verify the number

of legitimate signatures of persons who are registered voters. On any petition, including an associated or included set of petitions, submitted to the board, any question concerning the invalidity of the signature of any person on the petition affects that signature only and does not affect or impair any other portion of the petition or petitions. Following the verification, a duly authorized employee of the board shall endorse on each paper the number of signatures verified by the employee and shall endorse and sign the paper. For the purpose of the endorsement, each paper shall contain a blank space for the endorsement. The papers shall be delivered to the boards not later than 9:00 p.m. on the Monday which is ten weeks or seventy days before the day on which the primary election should be held under the primary election law, or, in the case of candidates for an office to be filled pursuant to § 22-1 (b) of this article, the papers shall be delivered to the boards not later than 9:00 p.m. on the Monday which is three weeks or twenty-one days before the day on which the special primary election is to be held under the Governor's proclamation setting the date for the special primary election. All papers delivered to a board pursuant to this subsection and required to be filed with the State Administrative Board of Election Laws pursuant to § 4A-2 shall, after verification and endorsement as herein required, be mailed or delivered by the board to the State Administrative Board of Election Laws, on the Monday which is five weeks or thirty-five days before the day on which the primary election should be held under the primary election law or, in the case of candidates for an office to be filled pursuant to § 22-1(b) of this article, on or before the Monday which is two weeks or fourteen days before the day on which the special primary election is to be held under the Governor's proclamation. The State Administrative Board of Election Laws shall determine the sufficiency of the percentage of registered voters signing petitions in those cases in which candidates file certificates of nomination or of candidacy in its office. In all other instances, such determination shall be made by the local boards.

(f) *Effect of insufficient number of signatures.* — If the total required number of signatures is not properly appened to the petition, it shall be declared insufficient and the name of the proposed candidate shall not be placed on the ballot.

CERTIFICATE OF CANDIDACY

§ 4A-1 Requirements for persons seeking nomination; listing and use of names, nicknames, titles, etc.

(a) Each person seeking nomination to any public or party office at a primary election, shall file a certificate of candidacy for nomination in the manner and at the time provided in this subtitle. Such person who is a candidate for any State, local, or party office must be a registered voter of the particular county or district in which he seeks to be nominated. A candidate for any federal, State, local or party office shall be affiliated with the party whose nomination or office he seeks. Before finally placing the name of such a candidate on the ballot at the succeeding primary election, the board shall determine that the candidate meets the registration and affiliation requirements of this section. The requirements of this section shall not apply to the party affiliation of any candidate for judicial office for which candidates are permitted to be listed on the ballot without party designation; but the requirements shall be applicable to the filing of any vacancy in any public or party office.

* * * * * *

§ 4A-3. When filed.

Except for certificates of candidacy filed by write-in candidates and as otherwise provided herein, certificates of candidacy shall be received and filed in the office of the appropriate board not later than nine p.m. on the Monday which is ten weeks or seventy days before the day on which the primary election should be held under the primary election law. Certificates of candidacy for an office to be filled by a special election pursuant to § 22-1(b) of this article, shall be received

and filed in the office of the appropriate board not later than nine p.m. on the Monday which is three weeks or twenty-one days before the day on which the special primary election is to be held under the Governor's proclamation setting the date for the special primary election. If the filing date should occur on a legal holiday, the certificates must be received and filed not later than nine p.m. on the next regular business day which is not a legal holiday.

* * * * * *

§ 5-2. Date.

(a) *In general.* — The primary elections by the political parties for candidates for State offices and State central committee shall be held throughout the State on the second Tuesday after the first Monday in September. The primary elections by the political parties in each year in which a national convention is held for the nomination of candidates for President and Vice-President shall be held throughout this State on the third Tuesday in May. A special primary election to fill a vacancy in the office of Representative in Congress shall be held on such date as the Governor shall specify pursuant to § 22-1(b) of this article.